



29 JUL 2008

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In re Application of OTSUKI et al :  
U.S. Application No.: 10/567,968 :  
PCT Application No.: PCT/JP2004/011853 :  
Int. Filing Date: 10 August 2004 :  
Priority Date Claimed: 12 August 2003 : DECISION  
Attorney Docket No.: 060131 :  
For: ANTIVIRAL AGENT AND FIBERS AND :  
ANTIVIRAL MEMBERS USING THE :  
SAME :

This is in response to applicant's "Renewed Petition Under 37 CFR 1.47(a)" filed 07 July 2008.

### **BACKGROUND**

On 10 August 2004, applicant filed international application PCT/JP2004/011853, which claimed priority of an earlier Japan application filed 12 August 2003. A copy of the international application was communicated to the USPTO from the International Bureau on 17 February 2005. The thirty-month period for paying the basic national fee in the United States expired on 12 February 2006.

On 17 February 2005, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 30 August 2006, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), which indicated that an oath or declaration in compliance with 37 CFR 1.497 must be filed.

On 28 November 2006, applicant a petition under 37 CFR 1.47(a).

On 26 February 2007, this Office mailed a decision dismissing the 28 November 2006 petition.

On 12 April 2007, applicant filed a renewed petition under 37 CFR 1.47(a).

On 24 April 2007, this Office mailed a decision dismissing the 12 April 2007 petition.

On 21 June 2007, applicant filed a second renewed petition under 37 CFR 1.47(a).

On 29 June 2007, this Office mailed a decision dismissing the 21 June 2007 petition.

On 28 December 2007, applicant filed a third renewed petition under 37 CFR 1.47(a).

On 04 January 2008, this Office mailed a decision dismissing the 28 December 2007 petition.

On 07 July 2008, applicant filed the present fourth renewed petition under 37 CFR 1.47(a).

### DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by: (1) an oath or declaration by each applicant on his or her own behalf and on behalf of the nonsigning joint inventors, (2) factual proof that the missing joint inventors refuse to join in the application or cannot be reached after diligent effort, (3) the fee set forth in §1.17(i), and (4) the last known addresses of the nonsigning joint inventors.

Applicant has previously satisfied items (1), (3) and (4) above.

With regard to item (2) above, MPEP 409.03(d) states in relevant part,

Where inability to find or reach a nonsigning inventor "after diligent effort" is the reason for filing under 37 CFR 1.47, an affidavit or declaration of facts should be submitted which fully describes the exact facts which are relied on to establish that a diligent effort was made. . . . The affidavit or declaration of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein. Statements based on hearsay will not normally be accepted. Copies of documentary evidence such as certified mail return receipt, cover letter of instructions, telegrams, etc., that support a finding that the nonsigning inventor could not be found or reached should be made part of the affidavit or declaration. It is important that the affidavit or declaration contain statements of fact as opposed to conclusions.

The petition states that joint inventor Masami Yakura cannot be found. Petitioner has sufficiently demonstrated that a diligent effort was made to locate Yakura. Petitioner has supplied evidence of multiple attempts to reach Yakura by postal mail and by telephone (see affidavits of Kazuo Wakabayashi). Thus, it can be concluded with reasonable certainty that Yakura cannot be located after diligent effort.

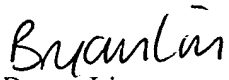
**CONCLUSION**

For the reasons above, the fourth renewed petition under 37 CFR 1.47(a) is GRANTED.

The application has an International Filing Date under 35 U.S.C. 363 of 10 August 2004 and a date under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) of 28 November 2006.

As set forth in 37 CFR 1.47(a), a notice of the filing of this application will be forwarded to the nonsigning inventor at the last known address of record and will be published in the *Official Gazette*.

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing in accordance with this decision.



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UNITED STATES PATENT AND TRADEMARK OFFICE

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For: ANTIVIRAL AGENT AND FIBERS AND  
ANTIVIRAL MEMBERS USING THE SAME

Dear Masami Yakura:

You are named as a joint inventor in the above-captioned United States national stage application, filed under the provisions of 37 CFR 1.47(a) and 35 U.S.C. 116. Should a patent be granted, you will be designated as an inventor.

As a named inventor, you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost set forth in 37 CFR 1.19) or to make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent agent or attorney presenting written authorization from you. If you choose to join in the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

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